UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY KIRKPATRICK,

Plaintiff,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

No. 2:24-cv-01927-DAD-CKD

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

(Doc. Nos. 11, 17)

This matter is before the court on defendant Home Depot U.S.A., Inc.'s motion to dismiss plaintiff's complaint. (Doc. Nos. 11, 17.)[1] On January 21, 2025, defendant's motion was taken under submission on the papers pursuant to Local Rule 230(g). (Doc. No. 22.) For the reasons explained below, defendant's motion to dismiss will be granted, with leave to amend.

BACKGROUND

On July 15, 2024, plaintiff Jerry Kirkpatrick filed the complaint initiating this false advertising class action in this court. (Doc. No. 1.) In his complaint, plaintiff alleges the following.

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[1] Defendant initially noticed its pending motion for hearing before the assigned magistrate judge (Doc. No. 11), before it was directed by minute order (Doc. No. 16) to properly re-notice its motion before the undersigned.

Defendant Home Depot U.S.A., Inc. sells Christmas lights under its private-label brand, Home Accents Holiday Decor. (Doc. No. 1 at ¶ 1.) Defendant sells and distributes Home Accents LED Christmas lights (the "Product") online, through its own retail stores, and through third-party retailers. (*Id*. at ¶ 19.)

Although Christmas lights come in an array of shapes and sizes, there are two standard bulb sizes: C7 and C9. (*Id*. at ¶ 2.) The C9 designation signifies specifications defined by the American National Standards Institute ("ANSI") and other widely accepted norms of the lighting industry. (*Id*. at ¶ 16.) Under ANSI C78.79, the "C" means "conical," and the number that follows refers to the diameter or width of the bulb in 1/8ths of an inch. (*Id.*) Thus, a C9 light should have a conical bulb with a 9/8ths inch diameter. (*Id*.) Industry lighting standards define the dimensions of C7 and C9 bulbs, and the consistency simplifies the consumer's ability to choose the appropriate bulbs and replacement bulbs for their decorations. (*Id*. at ¶ 2.) Standard C9 bulbs also have standardized bases, which provide the physical connection between the bulb and the socket. (*Id*. at ¶ 17.) These bases also have a specific thread pattern to securely attach to compatible light sockets. (*Id*. at ¶ 18.) Any C7 bulb will fit a C7 socket, and any C9 bulb will fit any socket designed for C9 bulbs. (*Id*.)

Defendant's Product is conspicuously labeled and advertised as containing standard C9 bulbs. (*Id*. at ¶ 3.) For in-store purchases, the Product's packaging prominently identifies the bulb shape and size and displays "C9" on the front of the packaging. (*Id*. at ¶ 24.) For online customers, the Product page conspicuously identifies the size and shape of the light bulb as C9, both in the Product name and its specifications. (*Id*. at ¶ 23.)

However, the Product lights are smaller, narrower, have a different base, and do not otherwise meet the dimensions and characteristics of a C9 bulb. (*Id*.) The Product bulbs have a maximum width of 1.04 inches, which is narrower than the standard 9/8ths of an inch, or 1.125 inches. (*Id*. at ¶ 20.) The Product bulbs are also not as bright as other C9 bulbs and do not have a standard Edison base. (*Id*.) The Product lights have a different thread pattern, so they are not compatible with other C9 LED sets or replacement bulbs. (*Id.*)

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On November 15, 2023, plaintiff Jerry Kirkpatrick, a citizen of Orangevale, California, purchased for personal or household use two sets of the Product at a Home Depot on 6001 Madison Avenue in Carmichael, California: (1) 24 count red/warm white C9 LED Lights, for $16.98; and (2) 50 count warm white C9 LED Lights, for $27.98. (*Id*. at ¶¶ 5, 26.) Plaintiff also paid a sales tax of $3.48 on these purchases, bringing his total amount paid for the purchase to $48.44. (*Id.* at ¶ 26.) Before buying the Products, plaintiff reviewed the packaging. (*Id*. at ¶ 27.) Plaintiff saw and relied on misrepresentations that the lights met the C9 standard and that they were "super bright." (*Id*. at ¶ 26.) The representations on the package were false and misleading because the lights that plaintiff purchased do not have the dimensions and characteristics of a standard C9 bulb. (*Id*. at ¶ 28.) If the Product lights had been accurately labeled, plaintiff and other class members would not have purchased the Product and/or would not have paid as much for it. (*Id*. at ¶ 29.) Plaintiff also suffered loss of the use and usefulness of the Product. (*Id.*)

Defendant knows, or at least it should know, that the Product bulbs are mislabeled. (*Id.* at ¶ 22.) Yet defendant has sought to capitalize on the consumer demand for standardized Christmas lights by uniformly and falsely labeling its cheaper and smaller LED bulbs as C9. (*Id*.) Defendant's false labeling allowed it to sell the Product at a higher price and realize sales it would not have otherwise made if the Product were not falsely labeled as having C9 bulbs. (*Id*. at ¶ 25.) On information and belief, defendant intended for consumers to rely on its false representations. (*Id*. at ¶ 31.)

Plaintiff seeks to represent a class of all persons in California who have purchased the Product. (*Id.* at ¶ 32.) On behalf of himself and the class, plaintiff brings three claims under California law: (1) violation of California's Consumers Legal Remedies Act ("CLRA"), California Civil Code §§ 1750, *et seq.*; (2) violation of California's False Advertising Law ("FAL"), California Business & Professions Code §§ 17500, *et seq.*; and (3) violation of California's Unfair Competition Law ("UCL"), California Business and Professions Code §§ 17200, *et seq.* (*Id.* at ¶¶ 57–90.) Plaintiff seeks damages as to his first claim and injunctive relief, restitution, disgorgement, and attorneys' fees as to his second and third claims. (*Id*. at ¶¶ 71, 77–79, 89–90.) Plaintiff also seeks civil penalties as to his second claim. (*Id*. at ¶ 79.)

On October 24, 2024, defendant filed the pending motion to dismiss plaintiff's complaint. (Doc. No. 11.) Pursuant to the parties' stipulation, (Doc. No. 18), plaintiff filed his opposition on December 20, 2024, and on January 17, 2025 defendant filed its reply thereto. (Doc. Nos. 20, 21.)

LEGAL STANDARD

A. Motion to Dismiss Pursuant to Rule 12(b)(6)

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A plaintiff is required to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In determining whether a complaint states a claim on which relief may be granted, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989), *abrogated on other grounds by DaVinci Aircraft, Inc. v. United States*, 926 F.3d 1117 (9th Cir. 2019). However, the court need not assume the truth of legal conclusions cast in the form of factual allegations. *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 676 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Moreover, it is inappropriate to assume that the plaintiff "can prove facts that it has not alleged or that the defendants have

violated the . . . laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

B. Pleading Fraud Pursuant to Rule 9(b)

A complaint alleging fraud must also satisfy heightened pleading requirements. Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). "Fraud can be averred by specifically alleging fraud, or by alleging facts that necessarily constitute fraud (even if the word 'fraud' is not used)." *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003)). "When an entire complaint, or an entire claim within a complaint, is grounded in fraud and its allegations fail to satisfy the heightened pleading requirements of Rule 9(b), a district court may dismiss the complaint or claim." *Vess*, 317 F.3d at 1107.

"Rule 9(b) demands that the circumstances constituting the alleged fraud be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." *Kearns*, 567 F.3d at 1124 (citations and internal quotation marks omitted). To satisfy the particularity standard of Rule 9(b), the plaintiff must allege the "'who, what, when, where, and how' of the misconduct charged." *Id.* (citing *Vess*, 317 F.3d at 1106).

DISCUSSION

Before turning to defendant's motion, the court first considers its unopposed request for judicial notice. (Doc. No. 12.)

A. Request for Judicial Notice

In connection with its motion to dismiss, defendant requests that the court take judicial notice of two documents: (1) Exhibit A, ANSI's "About" webpage, https://webstore.ansi.org/info/about; and (2) Exhibit B, ANSI Standard C78.79: Nomenclature for Envelope Shapes Intended for Use with Electric Lamps. (Doc. No. 12.)

"In general, websites and their contents may be judicially noticed." *Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020). Accordingly, the court

will take judicial notice of the webpage submitted as Exhibit A, but "solely for [its] existence and content, and not for the truth of any statements" within. *2Die4Kourt v. Hillair Cap. Mgmt., LLC*, No. 16-cv-01304-JVS-DFM, 2016 WL 4487895, at *1 n.1 (C.D. Cal. Aug. 23, 2016), *aff'd*, 692 F. App'x 366 (9th Cir. 2017); *see also Pac. Overlander, LLC v. Kauai Overlander*, No. 18-cv-02142-KAW, 2018 WL 3821070, at *2 (N.D. Cal. Aug. 10, 2018) ("The Court therefore takes judicial notice of the Defendant's website, the print-outs of the Instagram account, and the print-outs of the Google reviews, but not for the truth of the contents therein."); *United States v. Kane*, No. 2:13-cr-00250-JAD-VCF, 2013 WL 5797619, at *9 (D. Nev. Oct. 28, 2013) ("When a court takes judicial notice of publications like websites and newspaper articles, the court merely notices what was in the public realm at the time, not whether the contents of those articles were in fact true."). The court will also take judicial notice of Exhibit B, finding that the ANSI standards regarding bulbs in electric lamps, used to aid manufacturers, consumers, and the general public, are the proper subject of judicial notice. *See Hendrickson v. Wal-Mart Assocs., Inc.*, No. 23-cv-00110-AJB-MSB, 2023 WL 6373072, at *2 (S.D. Cal. June 27, 2023) ("As such, because the remainder of Plaintiff's documents derive from undisputed legislative, administrative, and regulatory sources, the Court grants judicial notice for Exhibits (6) and (7)."); *see also Arroyo v. AJU Hotel Silicon Valley LLC, et al.*, No. 20-cv-08218-JSW, 2021 WL 2350813, at *2 (N.D. Cal. Mar. 16, 2021) (taking judicial notice of several exhibits, noting that the court may also consider the exhibits under the doctrine of incorporation by reference because they are documents whose contents are alleged in the complaint and on which the complaint necessarily relies) (citation omitted).

B. Defendant's Arguments

In its pending motion to dismiss, defendant argues that plaintiff's UCL, FAL, and CLRA claims must all be dismissed because plaintiff has not alleged an actionable misrepresentation upon which to base these claims. (Doc. No. 11 at 9–10.) In the alternative, defendant argues that plaintiff has not adequately pleaded defendant's knowledge of the misrepresentation or any resulting damage to plaintiff. (*Id.* at 10–11.) Finally, defendant argues that to the extent plaintiff

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seeks injunctive relief in his complaint, he lacks standing to do so and that such relief is unavailable. (*Id*. at 11.) The court will address each argument in turn below.

1. Actionable Misrepresentation

Defendant first argues that plaintiff "has not alleged an actionable misrepresentation for any of his three claims." (Doc. No. 11 at 9.) In opposition, plaintiff argues that defendant's representation on the packaging of the Christmas lights "that the lights met C9 specifications was false and misleading." (Doc. No. 20 at 9.)

"California's UCL, FAL, and CLRA require basic fairness in advertising and permit a civil remedy against those who deceive consumers." *Whiteside v. Kimberly Clark Corp*., 108 F.4th 771, 777 (9th Cir. 2024). "[T]he California Supreme Court recognized in *Kasky v. Nike, Inc*., 27 Cal. 4th 939, 950 (2002) that California's consumer protection laws prohibit not only advertising which is false, but also that which is either actually misleading or which has a capacity, likelihood, or tendency to deceive or confuse the public." *Roper v. Big Heart Pet Brands, Inc*., 510 F. Supp. 3d 903, 917 (E.D. Cal. 2020); *see also Whiteside*, 108 F.4th at 777 ("Those laws prohibit not only false advertising, but also advertising that is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public.") (internal citations and quotation marks omitted).

To plausibly allege a UCL, FAL or CLRA claim based upon a misrepresentation, plaintiff must allege that he relied on a misrepresentation and suffered injury as a result. *Barton v. Procter & Gamble Co.*, 766 F. Supp. 3d 1045, 1064 (S.D. Cal. 2025) (citing *Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1092 (1993)). "Claims brought under the CLRA, UCL, or the FAL are governed by the 'reasonable consumer test.'" *Roper*, 510 F. Supp. 3d at 916 (citing *Williams v. Gerber Products Co*., 552 F.3d 934, 938 (9th Cir. 2008)). "[T]he reasonable consumer standard requires a probability that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled." *Whiteside*, 108 F.4th at 777–78 (internal quotation marks and citation omitted). "California courts . . . have recognized that whether a business practice is deceptive will usually be a question of fact not appropriate for decision [at the pleadings stage]." *Williams*, 552 F.3d at 938–39 (citing *Linear Tech. Corp. v.*

Applied Materials, Inc., 152 Cal. App. 4th 115, 134–35 (2007)). "[I]n federal court, dismissals of UCL, FAL, and CLRA claims at the pleadings stage have 'occasionally been upheld,' but such cases are 'rare.'" *Whiteside*, 108 F.4th at 778 (quoting *Williams*, 552 F.3d at 939). "Dismissal is appropriate when 'the advertisement itself [makes] it impossible for the plaintiff to prove that a reasonable consumer [is] likely to be deceived.'" *Id.*

As noted, defendant argues that plaintiff has not alleged facts plausibly showing that defendant misrepresented anything about the Product. (Doc. No. 11 at 14.) In opposition, plaintiff argues that defendant has labeled the Product as containing C9 bulbs, but the Product's bulbs do not meet C9 standards. (Doc. No. 20 at 11–13.) According to plaintiff, he has alleged that the Product's labeling is a misrepresentation because the Product lights vary from standard C9 lights in terms of their size, their brightness, and their base. (Doc. No. 20 at 11–13.) In reply, defendant argues that plaintiff's allegations regarding variations between the Product bulbs and C9 bulbs are de minimis, vague, conclusory, or ignore relevant information. (Doc. No. 21 at 5–9.) For example, as to the size of the Product bulbs, defendant argues that the difference between the 1.04-inch wide Product bulb and a 1.125-inch wide standard C9 bulb is "de minimis," and "could not possibly mislead a significant portion of the intended audience of reasonable consumers" because plaintiff has not alleged that a reasonable consumer would know that a C9 bulb measures 1.125 inches. (Doc. No. 11 at 3–4, 15–16.) Defendant also argues that because there is a cutout in the Product's packaging which permits purchasers to see the Product bulbs before purchasing, "there was no surprise about how wide the caps were." (*Id.* at 17.) In opposition, plaintiff argues that there is a "significant difference in the size," and that the Class lights are closer to a C8 size which "is not a standard designation and commands little market recognition." (Doc. No. 20 at 13.) Plaintiff also argues that "a reasonable consumer would not necessarily deduce that the lights failed to conform to C9 specifications" from just "a small window revealing only part of the product." (*Id.*)

As stated above, whether a label is deceptive "will usually be a question of fact" absent rare circumstances. *Williams*, 552 F.3d at 938. On the other hand, "where a court can conclude as a matter of law that members of the public are not likely to be deceived by the product

packaging, dismissal is appropriate." *Werbel ex rel. v. Pepsico, Inc.*, No. 09-cv-04456-SBA, 2010 WL 2673860, at *3 (N.D. Cal. July 2, 2010). As an example of such circumstances, in *Freeman v. Time, Inc.*, 68 F.3d 285 (9th Cir. 1995), the Ninth Circuit upheld the dismissal of a plaintiff's challenge to a mailer that he argued "falsely represents that the reader has won" a sweepstakes, finding that "when read reasonably and in context," the promotion, which stated multiple times that plaintiff would only win the prize if he had the winning sweepstakes number, "ma[de] no such false representation." *Id*. at 290. Accordingly, district courts have on occasion granted dismissal of UCL, FAL, and CLRA claims brought in relation to product labelling where it is "obvious from the product packaging that no reasonable consumer would believe" the alleged misrepresentation. *Werbel ex rel.*, 2010 WL 2673860, at *3 (finding the plaintiff's allegation that "members of the public are likely to be deceived into believing that Cap'n Crunch derives nutrition from actual fruit" to be "nonsense" where the "packaging clearly states that product is a 'SWEETENED CORN & OAT CEREAL'"); *see also Garza v. Spectrum Brands Pet LLC*, 760 F. Supp. 3d 1039, 1045, 1051 (E.D. Cal. 2024) (dismissing the plaintiff's consumer deception claims, finding that "in reviewing the entirety of the package" which stated that "the dog chews are made with real chicken, pork, & duck" and contained an "ingredients list show[ing] that the seventh, eight, and ninth ingredients out of thirty-seven ingredients are chicken, pork, and duck respectively," a "a reasonable consumer could not be misled to believing that the first ingredient of the dog chews is meat") (appeal pending).

Here, however, there are no such similar circumstances that would make it impossible for a reasonable consumer to be misled. As stated above, plaintiff has alleged all of the following. Christmas lights come in two standardized bulb sizes: C7 and C9. (Doc. No. 1 at ¶ 14.) The Product is conspicuously labeled and advertised as containing C9 bulbs. (Doc. No. 1 at ¶ 20.) Plaintiff has included photos in his complaint demonstrating that the Product contains the phrase "C9" printed on the retail packaging, and the online Product page for the Christmas lights includes the phrase "C9" as part of the Product name. (Doc. No. 1 at ¶¶ 23–24.) The Product lights deviate from standardized C9 lights in a number of ways, one being that the Product lights have a maximum width of 1.04 inches, when the standard C9 bulb width is 1.125 inches. (*Id*. at

¶ 20.) The Product lights "are not compatible with other C9 LED sets or replacement bulbs." (*Id*.) Before making his purchase, plaintiff "saw and relied on misrepresentations that the lights met the C9 standard," and that "[t]he main features he cared about were the size and shape of the bulb, compatibility with his existing light strings, and brightness." (*Id*. at ¶¶ 26–27.) Plaintiff "suffered loss of the use and usefulness of the product," and if the Product had been accurately labeled, he "and other Class members would not have purchased the product and/or would not have paid as much for them." (*Id*. at ¶ 29.)

It is not at all clear that a reasonable consumer, from reading the entirety of the packaging of the Product and observing the bulbs through the packaging's window, would understand that despite the Product being advertised as containing C9 bulbs, the bulbs do not conform to C9 standards. Whether a 0.085-inch difference in width is de minimis or serves to meaningfully mislead consumers, whether a window in the packaging would reveal to a reasonable consumer that the bulbs are not as wide as standard C9s, and whether a reasonable consumer knows the width of a standard C9, all are questions of fact, and so do not demonstrate that plaintiff has failed to allege an actionable misrepresentation. *See Watson v. Crumbl LLC*, 736 F. Supp. 3d 827, 844 (E.D. Cal. 2024) ("[A]t this early stage, the Court cannot say with certainty that a reasonable consumer would not be misled because they would understand that 'Fees' here would not include government-imposed fees. Defendants are free to revisit this argument following discovery."). Accordingly, the court rejects defendant's arguments that it is impossible for a reasonable consumer to be misled by defendant's C9 labeling because the difference in bulb width between its Product and standard C9s was either de minimis or clearly apparent to a consumer through the packaging window.

As to the Product's size, defendant also argues that the C9 labelling is not a misrepresentation because "when a Christmas light is described as C9, that does not necessarily mean that it is exactly 1.125 inches . . . ." (Doc. No. 11 at 17.) Defendant invokes language from the ANSI standards, attached as Exhibit B to its request for judicial notice, and in particular points to the Customary Units section of that standard, which states that "[t]he unit shall be expressed in eighths of an inch, *with fractions added when necessary*." (Doc. No. 12-2 at 13)

(emphasis added). Defendant argues that this language demonstrates that "fractional units can be added for certain size ranges and rounded upwards" and bulbs can "vary in size and still properly be described as C9." (Doc. No. 11 at 17.) In opposition, plaintiff argues that "[w]hile ANSI does permit limited deviations, these variances are confined to fractions of 1/16th of an inch or smaller." (Doc. No. 20 at 12.)

The court has reviewed the table in the Customary Units section of Exhibit B, and notes that for bulb sizes greater than 0.75 inches, fractional units may be added in the amount of "half of an eighth of an inch," or $1/16^{th}$ of an inch (0.0625 inches). (Doc. No. 12-2 at 13.) Further, the Customary Units section of the standard suggests that fractional units added are reflected in the description of the bulb, meaning that if a bulb were fractionally different in size from a standard C9, even by as little as 0.085 inches, the bulb size may be described with more specificity than simply as a C9. (*See id.*) (noting as an example a "T2-3/4 bulb" or a "T2.7 bulb" to describe a bulb that is 0.085 inches larger in diameter than a standard T2 bulb). Accordingly, the court finds defendant's contention, that a bulb that is 0.085 inches smaller than a standard C9 bulb is still properly described as a C9, to be entirely unsupported by the information set out in the ANSI standards (Doc. No. 12-2, Exhibit B). The court therefore also rejects defendant's argument that plaintiff has not alleged a misrepresentation based on the size of the Product's bulbs because the "language of ANSI C78.79 itself permits some variances in the size of C9 labeled bulbs," (Doc. No. 11 at 17), and concludes that plaintiff has alleged an actionable misrepresentation on the basis that the Product bulbs are described as C9s but do not meet standard C9 sizing.

2. Defendant's Knowledge

Defendant next argues that all three of plaintiff's claims fail because plaintiff has not alleged defendant's "knowledge of a defect at the time of sale and its intent to defraud." (Doc. No. 11 at 23.) In opposition, plaintiff argues that scienter is not a required element of his claims, and that even if it were, his allegations regarding the prominence of the C9 designation on the Product packaging are sufficient to allege defendant's knowledge of the misrepresentation. (Doc. No. 20 at 16.) In reply, defendant argues that knowledge is a required element because plaintiff's

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UCL, FAL, and CLRA claims are "grounded in fraud" and "sound in fraud," and that, as a result, plaintiff must satisfy the particularity requirements of Rule 9(b). (Doc. No. 21 at 9.)

The court agrees that plaintiff's claims sound in fraud and are rooted in a theory of fraudulent misrepresentation, since plaintiff's complaint alleges each element of a common law fraud claim and incorporates those allegations into all three of his claims. (*See* Doc. No. 1 at ¶¶ 20, 22, 26, 29, 57, 72, 80) (alleging that the Product's packaging describes the light bulbs as being C9s when they are not, that defendant knows the Product is mislabeled and intends for customers to rely on the false representations, that plaintiff did indeed rely on the misrepresentation, and that as a result he suffered the loss of the use and usefulness of the Product); *see also McKinney v. Corsair Gaming, Inc.*, No. 22-cv-00312-CRB, 2022 WL 2820097, at *5 (N.D. Cal. July 19, 2022) (finding that the plaintiffs' claims "sound in fraud" where the plaintiffs' allegations "state all of the elements of common law fraud" and "if allegations of fraud were stripped from the FAC, there would be little left of the UCL, FAL, and CLRA claims"). Accordingly, plaintiff's claims are subject to Rule 9(b)'s heightened pleading standards for fraud claims. *See In re Sony Grand*, 758 F. Supp. 2d 1077, 1088 (2010) (holding that the plaintiffs' UCL, FAL, and CLRA claims "are rooted in theories of fraudulent concealment and fraudulent misrepresentation and therefore must satisfy Rule 9(b)'s heightened pleading requirements"); *McKinney*, 2022 WL 2820097, at *6.

"Under Rule 9(b), circumstances constituting fraud or mistake must be stated with particularity, but malice, intent, knowledge, and other conditions of a person's mind, including scienter, can be alleged generally." *United States v. Corinthian Colleges*, 655 F.3d 984, 996 (9th Cir. 2011) (internal citation and quotation marks omitted). "This does not mean that conclusory allegations regarding a defendants' knowledge will suffice." *Punian v. Gillette Co.*, No. 14-cv-05028-LHK, 2015 WL 4967535, at *10 (N.D. Cal. Aug. 20, 2015). Plaintiff's complaint must simply "set out sufficient factual matter from which a defendant's knowledge of a fraud might reasonably be inferred." *United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 679 (9th Cir. 2018). As to the timing of that knowledge, plaintiff must plead defendant's knowledge of fraud before or at the time of plaintiff's purchase. *Freund v. HP, Inc.*, No. 22-cv-03794-BLF,

2023 WL 5184140, at *3 (N.D. Cal. Aug. 10, 2023) ("The parties agree that Plaintiff must plead HP's knowledge of the defect at the time the sale was made."); *see also Klaehn v. Cali Bamboo LLC*, No. 21-55738, 2022 WL 1830685, at *2 (9th Cir. June 3, 2022) ("Under Fed. R. Civ. P. 9(b), a plaintiff must plead circumstances from which a court can plausibly infer the defendant's knowledge. So, the question here is whether Plaintiffs pleaded facts about the circumstances of the alleged defect that would allow us to infer that Cali knew about the defect *at the time of sale to Plaintiffs*."); [2] *Resnick v. Hyundai Motor Am., Inc.*, No. 16-cv-00593-BRO-PJW, 2017 WL 1531192, at *14 (C.D. Cal. Apr. 13, 2017) (rejecting the plaintiffs' argument that "knowledge is not required to prove claims based on Defendants' alleged affirmative misrepresentations," noting that "a manufacturer's representations about a product should not be considered deceptive under the CLRA merely because the product manifests a defect of which the manufacturer had no prior knowledge").

As to defendant's knowledge, plaintiff simply alleges that defendant "knows, or at least it should know, that its Home Accents C9 bulbs are mislabeled." (Doc. No. 1 at ¶ 22.) In support of defendant's knowledge, plaintiff alleges only that the C9 labeling appearing on the Product is conspicuous. (*See* Doc. No. 1 at ¶ 23) (alleging that "the product page conspicuously identifies the size and shape of the light bulb (e.g., C7 or C9), both in the product name and its specifications"). However, plaintiff does not allege any facts regarding when defendant became aware that the Product was mislabeled or that the Product bulbs did not meet standard C9 specifications—namely, whether that event occurred before or after plaintiff's purchase. Accordingly, the court concludes that plaintiff's complaint does not satisfy the heightened pleading requirements of Rule 9(b). *See Hauck v. Advanced Micro Devices, Inc.*, No. 18-cv-00447-LHK, 2018 WL 5729234, at *6 (N.D. Cal. Oct. 29, 2018) (finding that the plaintiffs failed to sufficiently allege fraud where the class action complaint contained no allegations that the defendant "knew of the Defect before the California Plaintiffs' purchase dates" and therefore "fails to allege [the defendant's] pre-purchase knowledge"); *see also Snyder v. TAMKO Bldg.*

[2] Citation to unpublished Ninth Circuit opinions throughout this order is appropriate pursuant to Ninth Circuit Rule 36-3(b).

Prods., Inc., No. 1:15-cv-01892-TLN-KJN, 2019 WL 4747950, at *11 (E.D. Cal. Sept. 30, 2019) ("These allegations are the type of conclusory allegations that are not sufficient to support the conclusion that Defendant obtained actual knowledge of the specific defect, nor do they come close to establishing that Defendant knew of the defect prior to Plaintiff's purchase."); *In re Hydroxycut Mktg. & Sales Pracs. Litig*., 299 F.R.D. 648, 659 (S.D. Cal. 2014) ("Plaintiffs have not alleged facts that would give rise to an inference of knowledge on the part of the Retailer Defendants that the advertisements regarding the Hydroxycut Products' safety and effectiveness were not true. The allegations that the Retailer Defendants 'knew or should have known' are conclusory."). All three of plaintiff's claims will therefore be dismissed. *See Resnick*, 2017 WL 1531192, at *19 (dismissing the plaintiffs' UCL, FAL, and CLRA claims where the plaintiffs "failed to establish that Defendants knew or should have known of any alleged paint defect at the time they advertised or provided information on their website"); *Snyder*, 2019 WL 4747950, at *11 (dismissing the plaintiff's claims brought under the UCL, FAL, and CLRA because the plaintiff did "not sufficiently allege Defendant had actual knowledge of the alleged defects prior to Plaintiff's purchase").

In reaching this conclusion, however, the court observes that this failure appears to be a rather "minor deficienc[y]," *Corinthian Colleges*, 655 F.3d at 997, that could be readily cured through the inclusion of additional factual allegations suggesting that defendant knew the Product's bulbs were not C9s before it began selling the Product, perhaps through its own testing of the Product, or because defendant sells numerous other lighting products, including several that do contain actual C9 bulbs. *See Punian*, 2015 WL 4967535, at *10 ("For instance, an additional basis for defendant's knowledge of a defect could be an allegation that the defendant knew of a defect from internal testing.") (citation omitted).

3. Damages

Defendant also argues that plaintiff has not alleged facts plausibly showing that he incurred any damages. (Doc. No. 11 at 24.) In opposition, plaintiff argues that he has adequately alleged damages "under the benefit-of-the-bargain theory," because he alleged that he would not have purchased the Product, or paid as much as he did for it, had the Product been accurately

labeled. (Doc. No. 20 at 17.) In reply, defendant argues plaintiff's allegations are too broad and conclusory to adequately allege damages.

"Under California law, the economic injury of paying a premium for a falsely advertised product is sufficient harm to maintain a cause of action." *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 965 (9th Cir. 2018). "Thus, a consumer's allegation that "she would not have bought the product but for the misrepresentation . . . is sufficient to allege causation . . . [and] to allege economic injury." *Id*. at 965–66 (citing *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 330 (2011)).

"To properly plead an economic injury, a consumer must allege that she was exposed to false information about the product purchased, which caused the product to be sold at a higher price, and that she 'would not have purchased the goods in question absent this misrepresentation.'" *Davidson*, 889 F.3d at 966 (quoting *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1105 (9th Cir. 2013)). Plaintiff has done so here. Plaintiff alleges that he "saw and relied on misrepresentations that the lights met the C9 standard," that defendant "[sold] its product at a higher price and realize[d] sales it would not have otherwise made," and that "[i]f the Home Accents C9 lights had been accurately labeled, Plaintiff and other Class members would not have purchased the product and/or would not have paid as much for them." (Doc. No. 1 at ¶¶ 25, 26, 29.) These allegations are adequate to plead an economic injury at this stage of the litigation and, accordingly, the court finds defendant's argument that plaintiff's claims should be dismissed for failure to adequately allege that he suffered damages to be unpersuasive. *See Davidson*, 889 F.3d at 966–67 (finding on the basis of similar allegations that the plaintiff had "properly alleged that she was injured by [the defendant's] allegedly false advertising").[3]

[3] In its reply brief, defendant argues that plaintiff failed to respond to its argument that plaintiff "has no claim for punitive damages," and the court should therefore "strike this claim for relief." (Doc. No. 21 at 12.) In reviewing defendant's pending motion, the sole argument advanced therein regarding damages is that plaintiff's allegations as to damages are conclusory; defendant advances no argument concerning pleading requirements for punitive damages specifically or concerning the availability of punitive damages under the UCL, CLRA, or FAL. Accordingly, the court rejects defendant's request in its reply brief that the court strike plaintiff's claim for punitive damages.

4. Equitable Relief

Finally, defendant argues that plaintiff has not adequately pleaded facts supporting his request for equitable relief. (Doc. No. 11 at 25.) Defendant observes that "Plaintiff has not alleged that he intends to purchase the Products again," and "[w]ithout such allegations, Plaintiff has no standing to assert a claim for equitable relief . . . ." (Doc. No. 11 at 26.) In opposition, plaintiff argues that a "previously deceived consumer [may] have standing to seek injunctive relief under certain circumstances" and that plaintiff "cannot easily determine whether Home Depot's future packaging is accurate." (Doc. No. 20 at 18–19.) In reply, defendant reiterates that plaintiff has "not alleged that he intends to buy the same holiday lights at any time in the future—let alone that he will do so imminently—so his speculation about what future packaging may say is irrelevant." (Doc. No. 21 at 13.)

The court finds defendant's argument to be persuasive. It is true, as plaintiff points out, that the Ninth Circuit has held that "a previously deceived consumer may have standing to seek an injunction against false advertising or labeling, even though the consumer now knows or suspects that the advertising was false at the time of the original purchase." *Davidson*, 889 F.3d at 969. Nonetheless, one's standing to do so depends on whether "the consumer may suffer an 'actual and imminent, not conjectural or hypothetical' threat of future harm." *Id.* (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). In *Davidson*, the plaintiff sued a manufacturer of personal cleansing wipes, alleging that the manufacturer falsely advertised the wipes as 'flushable' in violation of the UCL, FAL, and CLRA when they were not, in fact, flushable. *Id.* at 961. Critical to the court's holding that plaintiff had standing to seek injunctive relief in that case were the allegations appearing in the complaint that the plaintiff:

> continues to desire to purchase wipes that are suitable for disposal in a household toilet; would purchase truly flushable wipes manufactured by [Kimberly-Clark] if it were possible; regularly visits stores . . . where [Kimberly-Clark's] 'flushable' wipes are sold; and is continually presented with Kimberly-Clark's flushable wipes packaging but has no way of determining whether the representation 'flushable' is in fact true.

Id. at 970–71. Here, plaintiff has not presented any comparable allegations in his complaint that he has any desire to again purchase the Product or will in fact do so. Because plaintiff "does not

allege the threat of future harm that *Davidson* held is required for Article III standing in a case seeking public injunctive relief," *Stover v. Experian Holdings, Inc.*, 978 F.3d 1082, 1087 (9th Cir. 2020), plaintiff's argument that he has standing to pursue injunctive relief in this case necessarily fails. *See Mendoza v. Electrolux Home Prods., Inc.*, No. 1:20-cv-01133-DAD-BAM, 2022 WL 4082200, at *8 (E.D. Cal. Sept. 6, 2022) (finding that the plaintiffs lacked standing to seek injunctive relief where they brought CLRA, UCL, and Song-Beverly Act claims regarding their purchase of microwaves but "d[id] not allege that they have any intention of repurchasing the Microwaves").[4]

C. Leave to Amend

Leave to amend should be granted "freely" when justice so requires. Fed. R. Civ. P. 15(a). The Ninth Circuit maintains a policy of "extreme liberality generally in favoring amendments to pleadings." *Rosenberg Bros. & Co. v. Arnold*, 283 F.2d 406, 406 (9th Cir. 1960). Generally, dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." *Intri-Plex Techs. v. Crest Grp.*, 499 F.3d 1048, 1056 (9th Cir. 2007) (citation omitted); *see also Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) ("Leave need not be granted where the amendment of the complaint . . . constitutes an exercise in futility . . . .").

In his opposition to the pending motion to dismiss, plaintiff requests leave to amend his complaint should the court grant defendant's motion. (Doc. No. 20 at 21.) It is not at all clear that permitting plaintiff leave to amend to attempt to cure the pleading deficiencies of his

[4] The court notes that if plaintiff could in good faith allege that he would purchase the Product from defendant again in the future if the Product did in fact contain C9 bulbs, but he would be unable to rely on the Product's C9 labeling at that time, plaintiff would likely satisfy the requirements of demonstrating his standing for equitable relief. *See Clark v. Eddie Bauer LLC*, No. 21-35334, 2024 WL 177755, at *2–3 (9th Cir. Jan. 17, 2024) (relying on its decision in *Davidson* in concluding that the plaintiff had standing to pursue injunctive relief where she alleged that she "would shop at one of Eddie Bauer's Oregon Outlet Stores again if she could have confidence regarding the truth of Eddie Bauer's prices and the value of its products"); *Carey v. J.A.K.'s Puppies, Inc.*, No. 5:21-cv-02095-WLH-DTB, 2025 WL 1718082, at *3 (C.D. Cal. June 3, 2025) (denying the defendant's motion to dismiss the plaintiffs' request for injunctive relief where the plaintiffs alleged that they will likely acquire another dog in the future, they desire to purchase rescue puppies, but they will be unable to rely on the defendant's representations that its puppies are indeed rescue puppies).

complaint discussed above would be futile, and defendant does not argue that leave to amend should be denied. Therefore, the court will grant plaintiff leave to amend his complaint to include additional allegations, in particular regarding defendant's knowledge of the alleged misrepresentation and supporting plaintiff's request for equitable relief, if plaintiff can do so in good faith. Defendant is encouraged to take heed of the court's analysis set forth above as to the sufficiency of plaintiff's allegations regarding actionable misrepresentation and damages in formulating its response to any amended complaint submitted by plaintiff.

CONCLUSION

Accordingly,

1. Defendant's request for judicial notice (Doc. No. 12) is GRANTED;
2. Defendant's motion to dismiss plaintiff's complaint (Doc. Nos. 11, 17) is GRANTED, with plaintiff being granted leave to amend as to all of his causes of action;
3. Plaintiff shall file his first amended complaint, or alternatively, a notice of his intent to not file a first amended complaint, within twenty-one (21) days from the date of entry of this order; and
4. The court hereby RESETS the Initial Scheduling Conference in this matter for October 27, 2025 at 1:30 p.m. before District Judge Dale A. Drozd by Zoom.

IT IS SO ORDERED.

Dated: **July 19, 2025**

Dale A. Drozd

DALE A. DROZD
UNITED STATES DISTRICT JUDGE